STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members and Counsel

From: Jonathan Wayne

Date: November 13, 2006

Re: Statutory Changes for Your Consideration at November 20 Meeting

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The Ethics Commission is specifically authorized to introduce legislation relating to areas within its jurisdiction. The attached proposal is the first of two rounds of statutory changes which you may wish to consider for submission to the Legislature. The staff will submit to you more changes before the December 12 meeting. The attached proposals are intended as a first draft and can be amended or omitted in the next draft.

TOPICS FOR CONSIDERATION

We have not drafted any language on the two following issues, but they have received some comment lately and might merit discussion by you at the November 20 meeting.

Maine Clean Election Act Qualification – Candidates for Governor
Some observers have commented that the Legislature should consider raising the threshold for gubernatorial candidates of collecting 2,500 qualifying contributions from registered Maine voters. The staff would like to consider this issue and report back to you on December 12.

Also, Maine Clean Election Act candidates are permitted to collect seed money of up to $100 from individuals in order to get their campaigns started and to collect qualifying contributions. There are no geographic or party restrictions on who may contribute seed money. Gubernatorial candidates may collect up to $50,000 in seed money, although in 2006 most candidates collected much less.

In 2006, two gubernatorial candidates seeking to qualify for public funds collected very large portions of their seed money (67% and 47%) from out-of-state individuals. All other gubernatorial candidates collected a small portion of seed money (5% - 10%) from outside Maine.

While raising seed money from out-of-state was completely legal and ethical in 2006, the Commission staff would like to propose requiring that these funds be raised only from Maine voters. Collecting seed money – although not a requirement – functions as an indicator of financial support and a necessary step to fund a statewide effort to collect

qualifying contributions. With so much public funding at stake for gubernatorial candidates, we believe it is sensible that these funds be raised from Maine residents only. Also, if any doubts are raised that the seed money actually came from the personal funds of the reported contributors, it is easier for the Commission to verify compliance with the seed money restrictions if the contributors are Maine residents.

Leadership PACs
There has been continuing controversy regarding Maine Clean Election Act candidates who raise private funds for political action committees which they control completely or which their legislative caucus controls. The staff recommends not including legislation on this topic because this is a sensitive policy area which we hope will be addressed by the Legislature.

SPECIFIC CHANGES ATTACHED

21-A M.R.S.A. §1014 ("Paid for" Disclosure)
Under current law, communications naming clearly identified candidates (advertisements, campaign literature, automated telephone calls) generally must disclose the name and address of the person who financed the communication and whether the communication was authorized by the candidate. Subsections 2-A and 5 were inserted by the Legislature in 2005 at the request of the Commission, and the staff believes they could benefit from some further amendments:

- The proposed changes would eliminate the requirement to include the sponsor's address in radio ads when the ad is sponsored by the candidate.
- Under current law, all communications naming a clearly identified candidate that are distributed to voters in the last 21 days before an election require the disclosure. The proposed changes would increase this period to 60 days, but would create an exemption for communications that are not made for the purpose of influencing the election (e.g., commercial advertisements that mention a candidate in her personal or professional capacity; newsletters to community groups in which a candidate is mentioned).
- Under current law, automated telephone calls made at any time that name or identify a clearly identified candidate must disclose what persons paid for the call. The proposed changes would restrict this requirement to the 60 days before an election but would extend the requirement to scripted telephone calls by live callers. Voter identification research would be excluded from the requirement.

21-A M.R.S.A. §1015-A (Affiliated Contributors)
Under the current statute, two or more businesses that share common owners or officers are considered a single contributor for purposes of the $250 or $500 contribution limit for candidates. The proposed change would clarify that a sole proprietorship and its owner would also be considered a single contributor.

21-A M.R.S.A. §1017(4) (Reporting by Replacement Candidates)
Replacement candidates are required under current statute to file a campaign finance report 15 days after being appointed by their local party committee. The proposed change would eliminate this requirement because it seems unnecessary. Almost all 2006 replacement candidates chose to participate in the Maine Clean Election Act and file a campaign finance report about one month after being reported. Also as a result of the proposed change, privately financed replacement candidates would first report their campaign finances six days before the election, which seems satisfactory.

21-A M.R.S.A. §1019-B (Reporting of Independent Expenditures)
Under current law, any communication that is distributed to voters within the last 21 days before an election is presumed to be an independent expenditure if it merely names or depicts a clearly identified candidate and there is a Maine Clean Election Act candidate in the race. Prior to that 21-day period, an expenditure for a communication is an independent expenditure only if the communication expressly advocates the election or defeat of a candidate. Several candidates complained that they should be eligible for matching funds based on party-sponsored ads and mailings, but the Commission found that the communications did not expressly advocate for the candidates' opponents.

The proposed amendment would increase the 21-day presumption period to 60 days. As under current law, the person making the expenditure could attempt to rebut the presumption by filing a written statement that the expenditure was not made to influence the election.

This would be a significant change in the law that would impact legislative and gubernatorial candidates, as well as third-party groups (PACs and party committees) wishing to communicate messages about candidates. It is difficult to predict the consequence of this law change if enacted, because some third-parties would adjust the timing and content of their communications in response to the new law. Its consequences *could* include:

- Paying matching funds to candidates earlier;
- Increasing the amount of matching funds paid to candidates;
- Party committees and political action committees may choose to send communications for the general election in August to avoid a 60-day presumption period;
- More independent groups might characterize their candidate-related communications as educational or research-oriented in order to rebut the presumption that the communications were sent to influence the election.

The staff is in favor of this change because it would make the matching funds system that was enacted directly by Maine voters more rational and would provide greater disclosure of amounts paid to influence elections.

21-A M.R.S.A. §1020-A(8) (Requirement to Send Five Notices to Non-Filers)
The Election Law states that a candidate's failure to file a campaign finance report within 30 days of the deadline is a Class E crime. In 2004 and 2006, the Commission failed to receive campaign finance reports from a small handful of candidates, and sent multiple written requests. The possibility of referral to the Attorney General for criminal prosecution caused a few uncooperative candidates to file financial reports. The proposed change reduces the requirement to send five written notices before referral to the Attorney General to three notices by registered mail. The staff believes the proposed requirement of three notices is fair to candidates and is more reasonable for the agency.

21-A M.R.S.A. §1051 and §1058 ($1,500 Threshold for PAC Reporting)
In 1999, the Legislature increased the fundraising and spending threshold for an organization to register as a PAC from $50 to $1,500. At that time, the Legislature did not change the $50 threshold in §1058 that requires filing financial reports by PACs, and did not change the $50 threshold in the introductory §1051. The Commission staff recommends amending these thresholds to $1,500 for the sake of consistency. This would have no practical effect on financial reporting by PACs, because PACs are only required to file financial reports if they are registered with the Commission.

21-A M.R.S.A. §1057 (Record-keeping for PACs)
Under current law, PACs must keep "receipts" for all expenditures for four years, but those receipts may be in the form of cancelled checks which provide no documentation of the goods or services purchased. This documentation is not submitted to the Commission except if the Commission requests it. In 2006, the Commission staff occasionally requested some documentation from PACs and party committees relating to independent expenditures.

The proposed change requires PACs to keep an invoice or receipt from a vendor stating the particular goods or services purchased for every expenditure of over $50 (similar to the requirement for candidates). With the development of publicly financed candidates, PACs are increasingly choosing to use their funds to pay third-party vendors rather than candidates. The Commission staff believes a vendor invoice or receipt is superior to a cancelled check as an audit trail that can be used to verify reported expenditures.

If the Commission views the proposed requirement as too burdensome, perhaps it would consider an alternative requirement that PACs must keep bank records for all expenditures and vendor invoices for larger expenditures (e.g., over $250).

21-A M.R.S.A. §§1125(5), (5-A), (12) (Qualification for MCEA Funding)
Section 1125 of the Maine Clean Election Act sets forth the required standards for approving a candidate for MCEA funding. The proposed changes would insert additional reasons for not qualifying a candidate based on serious violations and for revoking a certification after it has taken place. We anticipate that the revocation would be employed very rarely, but it is important authority for the Commission to have in place in cases of serious non-compliance.

3 M.R.S.A. §321 (Auditing of Lobbyists)

One major responsibility of the Commission is to receive the annual registration of lobbyists and receive their monthly and annual reports of their activities. Many lobbyists presume that the Commission has the statutory authority to investigate non-compliance with the reporting requirements, but in fact it does not. The proposed statutory change would authorize the Commission to investigate non-compliance when it is brought to the Commission's attention by requiring the lobbyist, client, or others to provide requested information or documents. Most lobbyists and clients are very cooperative in providing requested information, so it is anticipated that the subpoena authority would be used very rarely. Nevertheless, it would be helpful to encourage compliance.